Calendar No. 196

101ST CONGRESS *1st Session*	SENATE	REPORT 101-99

OIL TANKER NAVIGATION SAFETY ACT OF 1989

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1461

AUGUST 1 (legislative day, JANUARY 3), 1989.—Ordered to be printed

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AUGUST 1 (legislative day, JANUARY 3), 1989.—Ordered to be printed

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[To accompany S. 1461]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1461) to enhance the navigation safety of oil tankers, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

PURPOSE OF THE LEGISLATION

The legislation, as reported, would impose new requirements on the operations of oil tankers in the United States, address shortcomings in navigation safety in Prince William Sound, Alaska, and enhance the authority of the Coast Guard to regulate effectively the conduct of oil tankers and merchant marine personnel in the United States.

BACKGROUND AND NEEDS

On March 24, 1989, the *Exxon Valdez*, a supertanker, ran aground on Bligh Reef in Prince William Sound, Alaska. This accident resulted in more than 11 million gallons of crude oil being spilled in Prince William Sound, making it the largest oil spill in the history of the United States. The spill had a significant impact on the pristine area in and around Prince William Sound, which is highly dependent on commerical and recreational fisheries and its tourism for its economic wellbeing. Despite attempts by the oil companies and government to control the spill and contain the

damage, hundreds of miles of Alaskan coastline have been covered with crude oil, and the habitats of many wildlife and fishery resources have been disrupted. Known wildlife losses attributed to the spill as of June 28, 1989, were 26,000 sea birds of all types, 81 bald eagles, and 827 sea otters. A number of harbor seals have also perished, but the exact number is unkown. In addition, there has been a disruption to the population of humpback and killer whales in the Prince William Sound area.

The causes of the *Exxon Valdez* oil spill are still under investigation by the National Transportation Safety Board, the U.S. Coast Guard and other agencies. Several factors, however, have been identified as either causes of or possible factors in the accident and the subsequent failure to control the extent of the damage. These factors include the history of alcohol-related problems of the captain of the *Exxon Valdez*; Coast Guard monitoring of merchant marine personnel; the navigation system and vessel tracking coverage in Prince William Sound; the lack of effective oil spill response capabilities; and the lack of coordination between State and Federal agencies and the private companies involved in the spill and cleanup operations.

In addition, during the weekend of June 23–24, 1989, three incidents involving oil tankers occurred which resulted in the spilling of more than 1,400,000 gallons of oil in U.S. waters. In Rhode Island Sound, a Greek-registered tanker grounded and spilled approximately 420,000 gallons of No. 2 heating oil. A barge collided with an oil tanker in the Houston Ship Channel in Texas, and released 168,000 gallons of crude oil. In the Delaware River, a Uruguayan tanker grounded and spilled 840,000 gallons of heavy oil.

The causes of these accidents are also under investigation at the time, but there appear to be similarities between these incidents and the *Exxon Valdez* spill in Alaska. In addition, the series of accidents in the last three months has demonstrated that the current system of regulation and control can be improved to prevent future spills and to enhance the capability of oil tanker operators, the oil industry, and others to respond effectively to those spills that do occur despite preventative measures.

Since 1976, there have been ten major production or transportation accidents that have released almost 50 million gallons of oil in the United States. It can be assumed, therefore, that oil spills can and will occur in the future. Recent experience has shown that there is a need to improve the ability to prevent future spills and minimize the damage caused by such spills when they occur.

The increasing dependence of the United States on foreign oil is another factor which increases the risk of oil tanker groundings or collisions and oil spills. In 1988, the United States imported more than 6 million barrels of oil per day. This translated into approximately 3,800 port calls by oil tankers. Thus, while relatively few accidents have occurred in relation to the total amount of oil moving by ship into the United States, with each supertanker carrying more than 50 million gallons of oil, and making almost 4,000 trips into U.S. ports, the risk posed by oil transportation operations is undeniable, and it appears that the industry and govenment are ill-prepared to respond to major oil spill accidents.

In fact, on June 14, 1989 the American Petroleum Institute released a task force report on oil spills. That report recommended many of the elements contained in the reported bill. The report states that if a 216,000 barrel spill is contemplated, "the industry is not prepared anywhere along the coastal U.S. to deal with a spill of this size". The experience at Prince William Sound demonstrated that governments at all levels are similarly ill-prepared to cope effectively with spills of that magnitude.

In the hearings before the Committee, witnesses from the Coast Guard, maritime labor, pilots' associations, offshore oilports, the tanker industry, and the State of Alaska discussed possible modifications in the current system of oil transportation. Those comments were considered in the development of this legislation.

Also, in the period following the March 24th *Exxon Valdez* grounding, six bills were introduced and referred to the Committee. The bills related to aspects of the Prince William Sound spill specifically and oil tanker operations in general. The legislative proposals included: requiring double bottoms or double hulls for all newly constructed oil tankers; Federal approval of oil spill contingency plans; an enhancement of Federal licensing regulation for merchant marine personnel; and an increase in Federal authority for oil spill cleanup efforts. The reported bill contains some of the provisions of those bills as well as other provisions developed after review of the hearing record and other information made available to the Committee.

Legislative History

The Committee held three hearings concerning the *Exxon Valdez* oil spill and various aspects relating to that spill and oil transportation generally. These hearings also considered provisions contained in the six bills (S. 691, S. 839, S. 941, S. 967, S. 986, and S. 987) that were referred to the Committee and which concerned oil spill prevention, control, and cleanup. Legislative proposals were received from the Administration as well. Testimony was received from Federal and State officials, labor unions, industry representatives, and other interested parties. On June 20, 1989, in open executive session, the Committee without objection ordered reported favorably an original bill, the "Oil Tanker Navigation Safety Act of 1989."

Summary of Major Provisions

The bill as reported includes several provisions to enhance the safety of oil tanker operations.

1. It would require a certain number of people to be on the bridge of oil tankers in specified waters and would prescribe certain functions and qualifications for those people.

2. It would enhance the authority of the Commandant of the Coast Guard (Commandant) to obtain the driving records of merchant marine personnel licensed by the Coast Guard. The Secretary of the department in which the Coast Guard is operating (Secretary) would be authorized to use this information to deny, suspend, or revoke merchant marine licenses if such actions are warranted.

3. It would require mandatory periodic, random, reasonable cause, and post-accident screening for alcohol use by merchant marine personnel in safety sensitive positions.

4. It would grant authority to the Secretary to temporarily suspend a mariner's license immediately under certain conditions relating to alcohol use.

5. It would require the preparation of a report within one year by the Secretary which identifies the ports within the United States that are in need of new or expanded Vessel Traffic Service (VTS) systems. Authority is granted to the Secretary to develop a user-fee system to facilitate the installation and maintenance of the VTS systems.

6. It would direct the Secretary to determine whether oil tankers should carry position reporting and identification equipment to aid in radar tracking of such vessels.

7. It would require that all designated oil tankers that are newly constructed be equipped with double hulls and double bottoms unless the Secretary finds through a rulemaking that such a requirement will not enhance navigation safety or that an equal benefit can be achieved through other methods of construction.

8. It would direct that all designated oil tankers prepare oil spill contingency plans and submit the plans for approval to the Secretary. Specific requirements for the plans are imposed in the legislation and the plans would be legally binding on the operators of the tankers. The approval function could be delegated to a State for approval consistent with uniform criteria established by the Secretary.

9. It would increase the Federal role in the event of an oil spill that is greater than 1,000,000 gallons or which pose a substantial danger to life, property, or the environment.

10. It would create an international inventory of oil spill equipment and contractors to be developed and maintained by the Secretary.

11. It would establish a National Council on Oil Spill Technology Research and Development. The Council, which would be composed of governmental and private sector representatives, would assess the current state of oil spill prevention and cleanup technologies and recommend additional Federal action necessary to support such research and development.

12. It would grant to the Secretary the authority to deny the right to operate in U.S. waters for any oil tanker that has not complied with the provisions of this legislation, and to impose civil and criminal penalties for violations of the legislation.

13. It would make changes in the navigation system and operations of oil tankers in Prince William Sound, Alaska, including modifying the existing VTS system, installing new devices, and mandating certain pilotage changes.

14. It would establish a Prince William Sound Oil Spill Recovery Institute in Cordova, Alaska. Funding for this institute would be provided from the Trans-Alaska Pipeline Liability Fund (Fund).

15. It would modify the liability provisions of the Trans-Alaska Pipeline Authorization Act (TAPAA) to increase the limits of liability on the Fund, and of individual owners of the vessels carrying oil from the Trans-Alaska Pipeline (Pipeline). It would also provide

for immediate funding for the Federal Government in the event of a spill involving Alaska North Slope crude oil.

16. It would mandate that vessels transmitting the Mississippi River be capable of receiving Coast Guard or other communications on a specified common radio frequency.

Estimated Costs

In the opinion of the Committee, it is necessary to dispense with the analysis by the Congressional Budget Office required by section 403 of the Congressional Budget and Impoundment Control Act of 1974, as amended, in order to expedite the business of the Senate. This estimate has been requested, but was not available at the time the Committee filed the report.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

NUMBER OF PERSONS COVERED

This legislation modifies the regulatory framework and structure for the transportation of oil by certain oil tankers. The Coast Guard currently has regulatory authority over the operations of oil tankers. This legislation expands existing Coast Guard authority in some areas, but the total number of persons regulated by the Coast Guard should not differ greatly from that being regulated under current laws.

ECONOMIC IMPACT

The legislation does not authorize additional funds to be appropriated from the general fund of the Treasury for existing or new Coast Guard programs. There are provisions which may lead to the imposition of user fees for certain specified activities, but the Coast Guard has existing authority in this regard and the imposition of such user fees would result in a limitation of total increased Federal costs as a result of the requirements of this legislation.

The legislation will increase the regulatory workload of the Coast Guard, and may lead to the hiring of additional personnel at that agency. That agency, however, is already operating below its authorized personnel ceiling, so it is not anticipated that any employees will have to be added above that existing ceiling.

Finally, there may be some economic impact to the oil tanker industry due to the requirements for the preparation of contingency plans, certain requirements imposed by those contingency plans, and possible modifications in the construction of oil tankers. Also, the modifications in liability under the TAP will result in a greater financial risk being borne by the oil industry and a concurrent lesser risk being borne by the Government, since the total liability of the Fund is raised from the current $100,000,000 to $750,000,000.

Because of the increase in these limits, it will be necessary to resume the collection of fees on each barrel of crude oil carried by the Pipeline. Collection of these fees has been suspended since the

total reserves in the Fund reached the current statutory limit. It is anticipated that these reserves will be diminished due to claims arising as a result of the *Exxon Valdez* accident, and the fee collection in any event will be resumed. Thus, there is expected to be no immediate increased economic impact as a result of this legislation over that which would have occurred as a result of the *Exxon Valdez* accident.

PRIVACY

The provisions of this legislation which relate to the National Driver Register (Register) and access to that information by the Commandant will affect the privacy of certain individuals. Currently, persons applying for or renewing merchant mariner's documents, licenses, and certificates of registry are not required to submit driving record information to the Coast Guard. The reported bill permits the Coast Guard to obtain that information in the Register in conjunction with their normal licensing procedures. The provisions relating to the Register are consistent with those applicable to other transportation modes and the overall impact on privacy is expected to be minimal given the safeguards on the use of the information that are contained in the legislation. Further, whatever limited impact on privacy that might result is justified in light of the need for the Coast Guard to obtain this information.

Similarly, the provisions which mandate random, periodic, and other testing for alcohol use will affect the privacy of individuals. The need, however, to ensure that vessel operations are conducted in a safe manner warrants whatever limited intrusion on privacy that may result from these provisions.

PAPERWORK

It is expected that the preparation of oil spill contingency plans by the tanker industry and the monitoring and approval process by the Secretary will entail an increase in the paperwork requirements associated with the regulation of the oil tanker industry. It is unclear at this time how significant the growth in paperwork requirements will be, but it is anticipated that the burden will be manageable for both governmental agencies and the industry.

Section-by-Section Analysis

SECTION 1—SHORT TITLE

This section states the short title of the bill, the "Oil Tanker Navigation Safety Act of 1989".

SECTION 2—DEFINITIONS

This section contains the definitions of various terms that are used throughout the bill.

a. "Oil tanker" is defined as a self-propelled vessel constructed, converted, or adapted to carry oil in bulk in its cargo spaces.

b. "Affected oil tanker" is defined as an oil tanker operating in waters subject to the jurisdiction of the United States that transfers oil in bulk at ports or terminals of the United States.

c. "Pilotage waters" are waters subject to the jurisdiction of the United States where affected oil tankers are required to be under the direction and control of a First Class Pilot, except as otherwise determined by the Secretary. The Secretary may exempt particular waters from inclusion as "pilotage waters", even if they are waters for which First Class Pilots' licenses are required, if the Secretary determines that there is no need for the special requirements imposed on transit through those waters.

d. "Secretary" is the Secretary of the department in which the Coast Guard is operating.

TITLE I—PROVISIONS APPLICABLE NATIONALLY

SECTION 101—LICENSED PERSONNEL

This section requires the initiation of a rulemaking by the Secretary to impose new requirements for the operations of oil tankers in pilotage waters. The rulemaking would require, subject to certain exceptions, that each affected oil tanker transiting these waters have: (1) at least four persons, including two licensed deck officers, on the navigation bridge of an oil tanker; (2) at least two individuals onboard the vessel holding First Class Pilots' licenses with endorsements for the waters being transited; and (3) one of the persons required to be on the bridge fix and record the vessel's position at specified intervals during the passage through pilotage waters, which records of position would be retained for a period of no more than 60 days.

These provisions are designed to meet concerns which arose subsequent to the *Exxon Valdez* accident. Current regulations permit the operation of oil tankers in pilotage waters and do not specify the minimum number of persons required to be on the bridge. Transits in pilotage waters frequently involve complicated maneuvers and may tax the ability of a single officer to manage the vessel and monitor its course at the same time. For example, the *Exxon Valdez* was under the control of a Third Officer who was assisted by a single lookout and a helmsman. The Committee believes the requirement of additional personnel on the bridge during pilotage transits will enhance the safety of operations and distribute the workload in a more reasonable manner.

The requirement for two individuals to hold First Class Pilots licenses with endorsements for the waters being transited is designed to avoid problems which can occur in pilotage waters. Frequently oil tankers have only one person in the crew who is legally authorized to pilot the vessel in pilotage waters. There is currently no requirement that an individual other than the master possess a pilot's endorsements for the waters being transited. Thus, if the individual holding the proper endorsements for the waters being transited is incapacitated in any way, there would be no one in the crew legally authorized to take command of the vessel in those waters. The Committee believes that to avoid this situation in the future, that is, where an unauthorized and possibly unqualified individual is required to assume control of the ship, a requirement for two persons to hold indentical endorsements is reasonable. Both

individuals need not be on the bridge at the same time to fulfill this requirement.

The requirement to fix and record the position of the vessel every six minutes will serve two purposes. In the even of an incident, there will be a written record to aid in the investigation of the accident and a reconstruction of events leading to the accident. Secondly, this provision will enhance the ability of the crew to monitor closely the movements of the vessel and to avoid dangerous situations.

These requirements will not be imposed if: (1) the pilotage of the tanker is provided by a qualified pilot who is also licensed by a state; or (2) the Secretary determines that the requirements will not enhance navigation safety. The term "qualified pilot" refers to an individual who is licensed by the Coast Guard pursuant to 46 U.S.C. 7101.

The Committee is informed that the majority of state-licensed pilots in the United States also hold Federal Pilots' licenses. In many cases, State pilot associations require an applicant to possess a Federal license as a condition of receiving a State license. The intent of this exemption provision is to permit the requirements of additional crew on the bridge, two officers with licenses endorsed for transited waters, and navigation plotting to be waived if the oil tanker is under the control of a State pilot who also holds a Federal license. The Committee intends that any such individual who holds a Federal Pilots' license and who is performing duties pursuant to that federal license would therefore be subject to Coast Guard jurisdiction for enforcement and other purposes.

Unlike foreign traffic, current law permits vessels in coastwise trade to operate without State pilots. They instead may rely upon federally-licensed pilots (who are also typically the masters of the vessels) to control the vessel in and out of its ports of call. Federal licensing and endorsement procedures are different from those imposed on State license applicants, and it is generally acknowledged that State pilots are more familiar with local pilotage waters than Federal pilots with endorsements for a particular area. In light of this circumstance, this section imposes the special requirements of additional personnel on the navigation bridge and the other requirements of this section only if the oil tanker is not under the direction and control of a qualified pilot who is also licensed by a state.

The Committee is aware of the existing pilotage regime that exists on the Great Lakes. This regime is the result of negotiated agreements involving the Great Lakes States and Canada. The current regime on the Great Lakes requires a minimum of three First Class pilots aboard oil tankers at all times. The personnel in charge of navigation make 80 or more trips per year through Great Lakes pilotage waters, which is in excess of Federal pilotage requirements and the equivalent of the experience gained by State pilots. Further, there is no readily available pool of State pilots on the Great Lakes, since the vessels transit the waters of several States and indeed two nations on a single trip.

Thus, there is neither a need for the extra requirements imposed by this section, nor is there an available pool of State-licensed pilots for affected oil tankers operating in the waters of the Great

Lakes. The Committee believes that these are appropriate circumstances warranting action by the Secretary to determine, under section 2(5) of the bill, that the waters of the Great Lakes are not "pilotage waters" and the special requirements of the section, therefore, would not apply to affected oil tankers transiting the Great Lakes. The Committee expects that these and other circumstances may be present in other areas of the Nation which may also justify the use of the authority granted in section 2(5).

SECTION 102—MOTOR VEHICLE DRIVING RECORDS

Subsection (a) amends the National Driver Register Act of 1982. It will permit the Commandant to gain access to the driving records of any individual applying for, renewing, or holding a merchant mariner's document, license, or certificate of registry to serve on or operate a commercial vessel. This provision is consistent with access to the Register that has been granted in other transportation modes, such as airlines or railroads. The purpose of this section is to ensure that the Coast Guard has the ability to identify those vessel personnel with drunk driving offenses. The Committee believes that such information should be available to the Commandant and incorporated into merchant marine licensing procedures for issuing documents, licenses, and certificates of registry.

In recognition of legitimate individual privacy concerns, the use of the information that the Commandant obtains is restricted. Furthermore, the Commandant may not obtain Register information if that information was entered on the Register more than five years prior to the date of the request unless a drivers' license revocation or suspension is still in effect at the time the information is requested by the individual. This will ensure that only recent offenses are considered in the personnel licensing documentation, and certification process.

Subsection (b) provides the Secretary with authority to suspend or revoke a license, certificate of registry, or merchant mariner's document if, among other conditions, the holder has been convicted of a serious criminal offense, or specified motor vehicle driving offenses, or if the holder's motor vehicle driver's license has been denied, cancelled, revoked, or suspended for cause and that cause reflects adversely on the holder's ability to serve as a merchant mariner.

This subsection authorizes, but does not mandate, action; the Secretary is given discretion to determine the appropriate action after consideration and evaluation of the circumstances involved in each particular case. The Committee believes, for example, that the Secretary should consider that the possession and use of alcohol are strictly prohibited on vessels of the inland waterway industry. Under these circumstances, where access to alcohol is denied and abuse of alcohol on the job is effectively precluded, the Secretary should not suspend or revoke a license or document of an individual who has been convicted of drunk driving if there is evidence that the individual is working to solve the problem and there is no evidence that he or she is using alcohol while serving on a vessel.

SECTION 103—ALCOHOL TESTING; ALCOHOL REHABILITATION

Subsection (a) requires the issuance, within 90 days after enactment of this legislation, of a rule to require periodic, random, post-accident, and reasonable cause testing for the use of alcohol by individuals serving on oil tankers. The individuals subject to these requirements will be those who are determined by the Secretary to perform safety sensitive functions. Only individuals holding licenses or merchant mariner documents issued by the Coast Guard, and who serve in such positions, will be subject to the testing provisions.

This provision has been included to address what the Committee believes to be a serious and pervasive problem in the maritime industry. The captain of the *Exxon Valdez* had a blood alcohol level of .06 when tested nine hours after the vessel ran aground. This is in excess of the current Coast Guard regulations which prohibit the operation of a vessel with a blood alcohol content greater than .04. Testimony before the Committee indicated that ships calling at U.S. ports routinely carry alcohol that is available for sale to the crew. The Committee believes that it is beyond dispute that the public has an overriding interest in assuring that oil tanker personnel performing duties which directly affect the safety of a vessel's navigation or operations do so free of the influence of alcohol.

The Committee recognizes that litigation is ongoing regarding the constitutionality of random drug testing, but notes that the Supreme Court has recently held certain other forms of drug testing constitutional. Several lower courts have upheld random testings of certain individuals as not violative of any constitutional rights.

The Committee believes that the protection of public health and safety, and the substantial risks posed by alcohol use by oil tanker personnel, constitute a compelling governmental interest that warrants implementation of random alcohol testing for merchant mariners.

In this regard, in 1987, the Committee approved mandatory drug and alcohol testing for the rail, motor carrier, and airline industries (S. Rept. 100–43). Thus, the extension of such testing to oil tankers is consistent with past Committee actions and based firmly on the continuing belief in the effectiveness of testing to deter unlawful consumption.

Also, the Secretary issued regulations, on November 21, 1988, for the maritime industry requiring the random testing for drug use, as well as drug testing in the other circumstances previously described, and testing for alcohol consumption in post-accident situations. These regulations further require that drug and alcohol test equipment be carried onboard commercial vessels The reported bill, therefore, is consistent with the current Coast Guard requirements relating to drug use, and the procedures adopted to implement the random alcohol testing requirements must be analogous to those established for drug testing.

The Committee believes strongly that serving in safety sensitive positions on oil tankers while impaired by alcohol is wholly incompatible with the need to ensure safe operations. Furthermore, it is clear that the current regulatory framework is incapable of deterring merchant marine personnel in safety sensitive positions from

consuming alcohol and occupying safety sensitive positions. This legislation is intended to deter the use of alcohol by requiring the testing of employees in safety-sensitive positions. The Committee believes that increased testing will provide the necessary deterrence. For example, the Coast Guard randomly tests its uniformed personnel. In the first three years of the random testing program, drug and alcohol use declined by more than 60 percent. Under random testing, safety-sensitive employees will have no advance warning of when they might be tested. Such testing should, therefore, reduce or eliminate their on-duty consumption of alcohol accordingly.

The Committee has given the Secretary the discretion to determine which functions are safety sensitive. This approach is identical to that adopted in the legislation affecting other transportation modes which was reported from the Committee in 1987.

The Committee intends that the Secretary be impartial in imposing these testing requirements on oil tanker personnel. It is important that regardless of the means chosen to select randomly personnel for testing, that selection must be done in an impartial and nondiscriminatory manner so as to minimize the potential for harassment. Further, while it is critical that, in the interest of safety, personnel responsible for the safety of the operations of the vessel be deterred from allowing alcohol to affect their ability to perform, this section should not be treated as an open authorization to test all oil tanker personnel, unless it is determined that they all serve in safety sensitive positions.

Subsection (b) requires the Secretary to conduct a rulemaking to determine whether the Coast Guard should be informed, on a confidential basis, about merchant marine personnel who are undergoing treatment in alcohol rehabilitation programs. If a rule were adopted it would apply only to those with licenses or documents who perform safety sensitive functions as determined by the Secretary. These individuals would be the same as those identified in the testing program discussed above.

The Committee is concerned that this provision not serve as a disincentive to individuals with alcohol-related problems to seek assistance. Any rule that is developed in this regard must ensure that neither the availability nor the effectiveness of treatment programs is diminished. Furthermore, the information must be maintained and treated in a confidential manner to the maximum extent practicable. Only in this way can the incentive to participate in rehabilitation programs be maintained.

This provision is the result of the Committee learning that the master of the *Exxon Valdez* had participated in a company-sponsored rehabilitation program and that the Coast Guard was unaware of his alcohol-related problems. Thus, the Coast Guard was unable to investigate the nature of his problem and the success, or lack thereof, of his rehabilitation during the merchant marine license renewal process.

The Committee believes that an identification program of this nature can succeed only with the active cooperation of the employees or their representatives. For example, the Air Line Pilots Association administers a voluntary alcohol rehabilitation program in which more than 800 commercial pilots have acknowledged and at-

tempted to end their addiction to alcohol. The Federal Aviation Administration is aware of the participants in this program and monitors their recovery process. Pilots entering this program are only allowed to resume flying once they are determined to have been rehabilitated. If a merchant marine treatment identification program is implemented by the Secretary, a similar cooperative effort between the Coast Guard and the representatives of licensees and documented personnel should be established.

SECTION 104—PROHIBITION ON SERVICE

This section establishes a procedure for the immediate suspension and physical possession by the Secretary of a license or merchant mariner's document in certain misconduct cases. The immediate suspension would be followed within 15 days by an expedited hearing by the Secretary. The purpose of this provision is to authorize the Secretary to remove persons from service for reasons that relate to his or her fitness to serve.

In order for the Secretary to take this action, there must be probable cause to believe that the individual: has served on an affected oil tanker in a safety sensitive position while impaired by alcohol; has been denied a motor vehicle license for cause; has had a driver's license cancelled, revoked or suspended; or has been convicted of a specified offense listed in the Register. Currently, the Secretary can suspend licenses or documents only after the completion of a lengthy administrative process. This section will give the Secretary authority to remove from service, at least temporarily, those persons who may be a threat to safe oil tanker operations.

SECTION 105—VESSEL TRAFFIC SERVICES

This section requires the Secretary to submit to the Congress within one year a report which identifies the ports of the United States that are in need of new, expanded, or improved VTS systems. This list should rank the identified ports in order of priority of need. To determine a port's priority, the Secretary is directed to consider the nature, volume, and frequency of traffic, the risk of collisions, groundings, and spills, and the extent to which the risk can be reduced by the installation expansion, or improvement of VTS systems.

Currently, there are only four major VTS systems in operation in the United States: Prince William Sound; Puget Sound; San Francisco; and Houston. Two major systems, New Orleans and New York, were eliminated by the Coast Guard as a result of budget constraints. Thus, a large number of ports in this country which handle tremendous volumes of oil and other hazardous materials have no vessel traffic monitoring systems whatsoever.

The Committee is particularly concerned that some of the Nation's busiest ports are operating without any traffic monitoring, direction, or control by the Coast Guard. VTS systems are effective in providing the Coast Guard with an overall picture of the traffic in a particular area and with the ability to advise ships of the location and direction of such traffic.

This section does not affect the discretion of the Secretary to determine the type of VTS system appropriate for a particular port

area. The Committee expects the Secretary to determie whether a system should be mandatory or voluntary in view of the nature of the traffic in port, and such other factors that the Secretary considers necessary. The primary goal in developing this list and subsequent installations or improvements of VTS equipment is the enhancement of vessel traffic safety.

The Committee is aware that new navigation assistance technologies are becoming available to the maritime industry. These technologies involve satellites, electronic charting, and other methods of precise tracking. The Committee urges the Secretary to examine all such technologies, including traditional methods such as radar and camera tracking, as well as innovative technologies, in the course of efforts to identify the most effective systems for each port on the list that is submitted to the Congress.

Subsection (b) authorizes the Secretary to establish and implement a system of user fees to partially or completely recover the costs of the VTS systems in operation today and those that will be installed or upgraded in the future. The Secretary is directed to include a schedule of fees in any final rule that may be promulgated. Such fees must be set in accordance with the General User Fee Statute (31 U.S.C. 9701), which will ensure that any fees reflect the actual value of the service received. All users would be subject to any fees for use of the VTS systems under this provision. The receipts from such fees are to be credited and available to the Secretary without regard to fiscal year limitations for use in meeting the costs of construction, installation, improvement, and operation of the VTS systems for which they were paid.

The concept of a fee structure to recover the costs of port navigation systems is not new. Other nations, such as the Netherlands, have implemented such systems quite effectively. The Committee urges the Secretary to investigate such fee systems and to recognize that different types and sizes of vessels pose different navigation safety risks and needs, resulting in different levels of use of VTS systems. The need for use of VTS systems by small fishing boats, for example, is less than the need for use of the systems by supertankers.

Subsection (b)(4) disclaims liability. The liability of the United States is not affected by any fees that may be imposed and collected pursuant to these provisions. The collection of any such fees does not constitute a comitment by the Government to perform any particular service.

Subsection (c) prohibits the Secretary from constructing, improving, expanding, or operating any new VTS systems until the Secretary submits to the Congerss the report required by this section. Based upon that report, priorities can be identified, and resources can be devoted to those ports in greatest need of VTS work. Two exceptions to this general prohibition on new activities are made: (1) of funds for the new VTS system activities were obligated on or before the date of enactment of this legislation; or (2) the activities are those authorized in section 203, which relate to the Prince William Sound VTS system.

SECTION 106—POSITION-REPORTING AND IDENTIFICATION EQUIPMENT

This section requires the completion, within one year after the date of enactment, or a rulemaking to determine whether electronic means of vessel position-reporting and identification should be required to be carried onboard all affected oil tankers. There are two elements that must be considered in the course of this determination: (1) whether this equipment should be required on tankers above a certain size; and (2) what should be minimum standards for such equipment.

During its analysis of the *Exxon Valdez* accident, the Committee was informed that current radar systems that are used in VTS systems do not function in the same manner as air traffic control systems. They are passive in nature and do not provide the Coast Guard personnel who monitor the VTS system with the precise location and type of vessel being monitored on the radar screen. For example, a radar signal cannot always provide information that will allow the operator to distinguish between an oil tanker and a fishing boat, since such identification is affected by the strength of the radar signal, the angle at which the radar signal strikes the vessel, and other factors.

The Committee believes that a system of positive position identification for oil tankers may serve to enhance the ability of the Coast Guard to monitor vessel operations in a port area and inform other vessels when oil tanker traffic is in the area, thereby increasing the safety of oil tanker navigation.

SECTION 107—OIL TANKER CONSTRUCTION AND SIZE

Subsection (a) requires the completion within one year of a rulemaking to require that all affected oil tankers which are newly constructed be equipped with double hulls and double bottoms. This requirement may be waived by the Secretary if it is determined that either or both the double hull and double bottom will not enhance oil tanker navigation safety or that an equal or greater benefit to such oil tanker navigation safety will be achieved by other structural requirements.

More than forty oil tankers in operation today in the United States are equipped with double bottoms. The *Exxon Valdez* was not constructed with either a double hull or a double bottom. It was originally designed as a double-bottomed vessel, but was built with only a single hull. The Coast Guard analysis of the *Exxon Valdez* accident found that, had the *Exxon Valdez* been double-bottomed, the oil outflow from the *Exxon Valdez* would likely have been reduced by 25 percent to 50 percent, or 2.75 million gallons to 5.5 million gallons. In addition, The Committee received information from private salvage experts and U.S. Navy personnel that also indicated that the accident would have released less oil into Prince William Sound had the *Exxon Valdez* been constructed with a double bottom.

The Committee recognizes that the International Maritime Organization (IMO) adopted tanker design regulations which specifically rejected double bottoms and double hulls. Instead, the current IMO regulations require the use of segregated ballast tanks as an alternative to double hulls and double bottoms. Further, testimony from

the U.S. oil tanker industry opposed a legislative mandate for double hulls. At the same time, legislation, in particular S. 839, has been introduced to require double hull construction, and similar measures are pending in the House of Representatives.

The Committee believes that the United States has the right to require certain construction standards for oil tankers that enter waters subject to its jurisdiction for purposes of transporting oil in bulk at a port or terminal. The legislation is prospective in nature. This requirement would not become effective before one year after the date of enactment of this legislation, thereby providing time for consultations with IMO and its member governments. In view of the fact that over forty oil tankers in operation in U.S. waters today have either double hulls or double bottoms in the absence of a statutory or IMO requirement, it seems that the industry itself has recognized the benefits to be gained from this type of design.

The Committee received no substantive information that would support the suggestion that double hulls or double bottoms would have an adverse impact on the safety of oil tanker operations. Other types of tankers, such as natural gas and hazardous chemical carriers, do employ double hull or double bottom construction with an apparent high degree of success.

The cost differential between a single hull and double hull construction is between 3.5 percent and 5 percent, according to figures developed by the Office of Technology Assessment for its report, "Oil Transportation by Tankers: An Analysis of Marine Pollution and Safety Measures", July 23, 1975. This figure was not disputed in testimony at the Committee's hearings and would not be an onerous burden for the industry to bear in light of the apparent protection that such construction would offer.

This subsection permits the Secretary to refrain from requiring double bottoms and double hulls if oil tanker navigation safety will not be enhanced, or if an equivalent or greater benefit will be gained from a different type of construction or structural feature.

The purpose of this provision is to permit the Secretary to investigate in the course of the one-year rulemaking various types of oil tanker design and construction, the cost and benefits of various types of design, and whether there might be an adverse impact on oil tanker navigation safety by the imposition of such a requirement. The Committee expects that such an investigation will be conducted, and would support a request by the Secretary to enlist the assistance of the National Academy of Sciences and other agencies if that is considered necessary in conjunction with the rulemaking.

This subsection calls for double bottoms and double hulls on newly constructed oil tankers, but the Committee does not expect that the Secretary will find that every new tanker must be built with both a double bottom and a double hull. Rather, the Committee has called for both in recognition of the possibility that the Secretary will find that a double bottom is warranted for some tankers, while a double hull is warranted for others, and both may be warranted for still others, depending upon the size, design, materials, or other factors affecting tanker safety. The Committee expects the Secretary to require one or both, based upon the information gained through public comment and studies, unless the best infor-

mation available suggests that neither will enhance safety, or that other structural requirements will serve the same purpose equally well or better. In the latter event, the Committee expects the Secretary to require such other structural features by regulation so that newly constructed tankers will be equipped with those features.

The Committee fully intends that the burden fall heavily on the Secretary to implement the requirements unless the evidence against such requirements is both clear and convincing. Such a determination must involve more than cost considerations and cannot be based solely upon foreign policy grounds or the impact of such requirements on U.S. membership in international maritime organizations. The requirements are to be imposed unless the evidence shows they clearly will not enhance safety by reducing the occurrence or extent of oil spills.

This subsection applies to all affected oil tankers, both foreign and domestic, to avoid disproportionate effects upon the U.S. industry. The Committee expects the Secretary to develop a mechanism to identify new tankers and to inspect those vessels for compliance. For purposes of the subsection, the Committee intends "newly constructed" oil tankers to be those the construction of which was commenced one year or more after the date of enactment of this legislation. The Committee further intends that substantial repairs or modifications of the hull or bottom of an existing vessel will result in the Secretary treating such a vessel as newly constructed, if the design, engineering, and construction involved are substantially equivalent to those which would be required to replace the same type of hull or bottom on that vessel.

Subsection (b) requires that the Secretary submit within one year a report describing the size, cargo capacity, and flag nation of oil tankers operating in U.S. waters and specifying changes in size and cargo capacity over the last twenty years. The report is to evaluate the relationship, if any, between those changes and oil tanker incidents, and it is to include any recommendations for limitations on size and cargo capacity that the Secretary considers appropriate.

The Committee discussed at its hearings the increase in the size of oil tankers over the last twenty years. The purpose of this subsection is to provide the Committee with information relating to the growth in oil tanker size, any concurrent increase in the risk to safe oil tanker operations posed by this increase, and an evaluation of whether there is any correlation between the two. This report will provide the Committee with this information, an assessment of whether oil tanker size should be limited, and any other legislative recommendations in this regard that the Secretary deems appropriate.

SECTION 108—OIL SPILL CONTINGENCY PLANS AND APPROVAL

This section requires that each owner or operator of an affected oil tanker maintain a contingency plan approved by the Secretary for each affected vessel. The criteria that must be met and the procedure for approving the plans are also included.

The purpose of this section is to establish responsibility for preparing and maintaining contingency plans with the owners and op-

erators of affected oil tankers, to establish criteria for adequate plans, and to ensure that the plans are reviewed and approved by the Secretary. The Committee expects that owners and operators will enter into cooperative and contractual arrangements for this purpose. A contingency plan for an individual tanker, for example, could state that the owner and operator participate in a cooperative that maintains personnel and equipment to respond to oil spills in a given region. The plan for that vessel then could describe the vessel's relationship with the cooperative's plan, incorporate the provisions of the cooperative's approved plan by reference, and rely upon the cooperative to fulfill the requirements of this subsection, to the extent that the Secretary has approved the cooperative's plan and the relationship between the cooperative and the vessel that is described. For example, the Committee expects that an affected tanker which is transiting from Alaska to California would have an approved plan that references several cooperative or contractual arrangements, with each one providing an approved oil spill response capability for a specified segment of the vessel's journey.

Subsection (a) lists the minimum requirements for each contingency plan. Each plan must include: (1) a detailed description of how the plan relates to and is integrated into other approved contingency plans; (2) in case of a spill, procedures for the timely notification of appropriate authorities, such as the Coast Guard and State environmental agencies; (3) minimum personnel training standards and identification of personnel responsible for taking action in the event of a spill; (4) a detailed description of the procedures to be used by the crew of a tanker in the event of a spill, including determining if, and when, additional peronnel and equipment are needed to respond to the spill; (5) in the event that additional equipment and personnel are needed, a detailed description of each organization to be relied upon, such as a cooperative or an oil spill response contractor, and the containment and cleanup equipment and personnel available; (6) arrangements, including those made through cooperatives or contractors, for the prepositioning of oil spill equipment at strategic locations from which it can be deployed to the spill site in a timely manner; and (7) requirements that sufficient equipment, material, and personnel be on board each tanker to respond immediately in the event of an oil spill. For the purposes of this subsection, the term "strategic locations" includes major ports, fishing harbors, environmentally sensitive areas such as fish hatcheries, and other locations that will facilitate the rapid deployment of oil spill response equipment and personnel.

Subsection (b) provides the Secretary the authority to waive or modify the requirements of subsection (a) if it is determined that the requirement will not enhance oil tanker navigation safety, including environmental protection. The Committee is aware of concerns, for example, about the requirements for personnel and equipment onboard each tanker. The safety of the vessel and crew are the paramount concerns, and these should be addressed first. Once they are secured, safe procedures should be employed by the crew to deploy equipment to attempt to contain the spill until assistance arrives.

The Committee expects the Secretary to waive or modify those requirements or others if it is determined that they are not necessary or that they will not serve to enhance the prevention and cleanup of oil spills on some or all vessels in some or all areas. However, the Committee intends that the Secretary exercise this authority only when there is a reasonable basis to conclude, based upon evidence gained from public comment and studies, that the requirements will not serve the desired purpose. Subsection (b) also allows the Secretary to waive or modify provisions of the final rule or the requirements in subsection (a) in case of an emergency which threatens oil tanker navigation safety, including protection of the environment.

Subsection (c) requires the Secretary to carry out regular inspections of affected oil tankers and equipment in order to ensure compliance with the approved contingency plans.

Subsection (d) allows owners and operators of affected oil tankers to form cooperatives in order to meet the requirements of this section.

Subsection (e) sets out procedures and requirements for approval of oil spill contingency plans by the Secretary. Upon receiving an oil spill contingency plan, the Secretary must solicit public comment by publishing a notice of availability in the Federal Register and cannot approve a plan until the public has had an opportunity to comment. In the case of a plan applicable to Prince William Sound, the Secretary must hold a public hearing in the Prince William Sound area. In addition, subsection (e) directs the Secretary to consider the adequacy of the equipment and personnel as well as the estimated response time and logistical arrangements in determining whether to approve a contingency plan. The Committee intends that the Secretary make this evaluation in light of the best available technology for oil spill containment and cleanup. Further, this subsection states that no contingency plan may be approved unless the Secretary finds that the equipment, personnel, and arrangements for implementing a response are sufficient to address the maximum probable spill, which is defined in subsection (f).

Finally, subsection (e) authorizes the Secretary to enter into a cooperative agreement with any State to delegate to that State the function of contingency plan approval for affected oil tankers according to the provisions of this section. The delegated authority would be subject to uniform standards for approval to be established by the Secretary. The Committee intends that such standards ensure consistent decisions and preclude the possibility of a plan being approved by a State when it would have been rejected by the Secretary, or vice versa, or different States reaching different conclusions about the adequacy of the same contingency plan for a tanker that operates within the waters of several States.

Subsection (f) directs the Secretary to publish guidelines for the calculation of the maximum probable spill from affected oil tankers in all waters subject to the jurisdiction of the United States. In making this determination, the Secretary must take into account the amount of oil being transported as well as the risk of a spill. However, in no instance can the maximum probable spill be less

than a previous spill in the same area from a similar class of oil tanker.

Subsection (g) prohibits the operation of an affected oil tanker in waters subject to the jurisdiction of the United States without an approved oil spill contingency plan. The Committee intends that this prohibition become effective no later than 18 months after the date of enactment of this legislation, which would be no less than 6 months after publication of the final rule required by subsection (a).

Subsection (h) provides that contingency plans have the force of law and can be enforced in the district courts of the United States.

Subsection (i) requires the Secretary to annually publish a description of all oil spill contingency plans approved by the Secretary as well as an up-to-date inventory of oil spill response equipment. The Committee intends that the description be sufficient to give the public notice, but it need not set forth or describe the elements of the approved plans. A list of vessels and areas transited should suffice in most cases. The approved plans should be on file with the Secretary and available for public review during normal business hours.

In addition, this subsection directs the Secretary to require practice drills under all approved contingency plans at least twice a year, to review the performance of these drills, and to publish notice of the availability of performance data on the drills. The Secretary shall require such additional drills and changes in equipment or procedure as the Secretary considers necessary to ensure that the approved plan is effectively implemented. Since spills often occur when least expected, the Committee intends that the Secretary conduct at least some of the semi-annual drills on an unannounced basis.

Subsection (j) requires that each approved contingency plan be kept readily accessible to the Coast Guard, relevant port authorities, and the oil tanker's owner/operator and crew.

Subsection (k) directs the Secretary to notify the President immediately in the event of an oil spill from an oil tanker in waters subject to the jurisdiction of the United States if the spill is greater than 1,000,000 gallons, or if there is substantial danger to life, property, or the environment. Once notified, the President shall require the Commandant to assume direction of the containment and cleanup of the spill. Such direction shall not affect the determination of liability for the costs of the spill, nor shall it necessarily constitute "federalizing" the containment and cleanup efforts under Section 311 of the Clean Water Act (33 U.S.C. 1321). The Committee intends that the Commandant be vested by the President with the authority to order the owner and operator to comply with their approved contingency plan, which is binding and enforceable against them under subsection (h), as well as to coordinate the responses of federal agencies.

SECTION 109—INTERNATIONAL INVENTORY OF EQUIPMENT AND CONTRACTORS

This section requires the establishment by the Secretary of an international inventory of oil spill equipment and contractors. The

inventory is to contain a list of equipment and personnel that could be made available in the event of a spill. The Committee expects that the list would include all equipment, in governmental and private custody, as well as similar information relating to oil spill contractors, that are geographically located and in other respects likely to be available for use in containing and cleaning up a spill in waters subject to the jurisdiction of the United States.

The Committee has learned that the Coast Guard does not maintain an inventory of this nature. Thus, in the crucial hours after a major spill, time can be wasted locating equipment and contractors to respond to the spill.

This section requires that the inventory be maintained and updated. It also directs the Secretary to require Coast Guard contractors to provide information for inclusion in the inventory.

SECTION 110—NATIONAL COUNCIL ON OIL SPILL TECHNOLOGY RESEARCH AND DEVELOPMENT

This section establishes the National Council on Oil Spill Technology Research and Development (Council). The Council is to be composed of fifteen members from government and the private sector. The membership is drawn from all Federal agencies with an interest or expertise in oil spill containment and cleanup, and from private sector interests involved in oil production, transportation, environmental protection, or scientific research in these areas. The Coast Guard representative is to be the Chairman of the Council, which will cease to exist 30 days after submission of the bibliography, report, and recommendations required by subsection (c).

During its analysis of the *Exxon Valdez* accident, the Committee learned that there is no coordinated, continuing, federally-directed research into oil spill containment and cleanup. The research that is being done is largely a disjointed effort between government agencies and private industry, and there appears to be no firm understanding of the status of research in this area and what deficiencies exist in current oil spill response technologies.

The Committee believes that a continuing effort should be made to develop new techniques of oil spill containment and cleanup. The goal of this research should be containment and cleanup of spills in environmentally sound ways.

SECTION 111—OIL SPILL DISASTER ASSISTANCE

This section amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) (Stafford Act) to include oil spills in the definition of a "major disaster." This section also adds "willful misconduct or negligence" to the standard for liability.

The Committee included these amendments to the Stafford Act in order to address the situation that confronted the Federal Government in the aftermath of the *Exxon Valdez* spill. Since the spill, local businesses have been hard hit by a lack of operating capital with which to cover the inflated cost of labor and the loss of business due to closed fishing seasons and a reduction in the tourist trade. By including oil spills in the definition of a major disaster, the disaster relief provisions established in the Stafford Act would

be available to State and local governments and businesses to help address the economic dislocation that inevitably occurs in the wake of such disasters.

Under the Stafford Act, as proposed to be amended, the governor of an affected State would be able to ask the President to declare an oil spill a major disaster if the spill is beyond the response capability of State and local agencies. If the President agrees and declares the spill a major disaster, the provisions of the Stafford Act make a broad range of disaster relief available to the affected communities.

These disaster programs were needed in the wake of the *Exxon Valdez* spill, and this prompted a request from the Governor of Alaska and the Alaska Congressional delegation that the President declare the spill an emergency under the Stafford Act. The President was apparently unable to agree to the request because of a concern, among others, that the Stafford Act could be interpreted to allow Exxon to escape responsibility for the cost of cleaning up the spill. This interpretation arose from the liability language in the Stafford Act, which only allows the Government to recover its reasonable costs from persons whose "intentional act or omission" caused the disaster. The Committee has addressed this concern by expanding the liability standard to include "willful misconduct or negligence."

SECTION 112—IMPACT ON OTHER LAW

This section declares that nothing in this legislation shall be construed or interpreted to affect in any way the authority of a State or political subdivision to regulate oil tankers or to provide for liability or response planning and activities in State waters.

SECTION 113—AUTHORITY OF SECRETARY IN U.S. WATERS

This section provides authority to the Secretary to deny an affected tanker the right to enter, exit, or transit U.S. waters if such tanker is operated in violation of provisions of this legislation or a regulation prescribed under it. This authority will ensure that the Secretary has the ability to enforce the provisions of this legislation, including those relating to the preparation of contingency plans.

SECTION 114—PENALTIES

This section establishes civil and criminal penalties for the violations of this legislation and regulations prescribed under it. The civil penalty is $25,000, and if the violation continues, each day of the violation is a separate violation subject to the $25,000 civil penalty. Vessels operated in violation of the legislation or regulations are liable in rem. A criminal penalty would be assessed if a person is found to have knowingly and willfully violated the provisions of this legislation or regulations. The criminal penalty consists of a fine not to exceed $50,000, imprisonment for up to five years, or both. Further, this section grants jurisdiction to the district courts of the United States to enjoin violations of the legislation and regulations prescribed pursuant to it.

SECTION 115—REPORT ON USER FEES

This section requires the Secretary to submit to the Congress, within 180 days after the enactment of this legislation, a report on the need to impose additional user fees upon owners and operators of oil tankers. The purpose of these fees would be to recover additional costs that are assumed by the Coast Guard in implementing provisions of this legislation. The report is to contain an evaluation of the desirability and feasibility of assessing and collecting such fees and the need, if any, for additional authority in this regard.

TITLE II—PROVISIONS APPLICABLE WITH RESPECT TO ALASKA

SECTION 201—PILOTAGE AT PORT OF VALDEZ

This section directs the Secretary to initiate and put into effect a rulemaking to insure that qualified Federal pilots who are also licensed by the State of Alaska will pilot all tankers while they transit the waters between Bligh Reef and the Port of Valdez. It is the intent of the Committee that the Secretary shall consider the pilots' safety in determining the point of embarkation or disembarkation from the vessel, and shall direct tanker companies to use whatever means are appropriate, including helicopters, to transport the pilots safely to and from the vessels at points beyond Bligh Reef.

SECTION 202—BLIGH REEF LIGHT

This section directs the Secretary to install and ensure the operation of an automated navigation light of Bligh Reef in order to make this hazard clearly for traffic from all directions.

SECTION 203—PRINCE WILLIAM SOUND VTS

Paragraph (1) of this section directs the Secretary to acquire, install, and operate such additional equipment and personnel as are needed to upgrade the capability to the existing VTS system in Prince William Sound, Alaksa, so that the persons using the system are able to track oil tankers transiting Prince William Sound between Hinchinbrook Entrance and the Port of Valdez. Further, the upgrade must enable the system to sound an audible alarm to alert the system operators when a tanker departs from its designated navigation route. Paragraph (2) directs the Secretary to submit to the appropriate Senate and House committees a report on the feasibility and desirability of instituting a positive vessel control system in Prince William Sound.

Funding for the acquisition and installation of the VTS upgrade is provided in section 205(d) of the bill. The ongoing costs of operating the Valdez VTS may be recovered from vessels using the system under the user fee authority granted to the Secretary in section 105(b) of the bill.

SECTION 204—OIL SPILL RECOVERY INSTITUTE

This section established the Prince William Sound Oil Spill Recovery Institute (Institute), which will be located in Cordova, Alaska. The Institute will conduct research and carry out educa-

tional and demonstration projects to develop arctic and sub-arctic oil spill response technology, and to determine the long-term effects of the *Exxon Valdez* spill on the environment and well-being of the inhabitants and natural resources of areas that were affected by the spill.

The Committee intends that the Institute will support a laboratory and other appropriate facilities to host researchers from throughout the Nation. Five million dollars have been provided for the first year in section 205(d) of the bill, and two million dollars in each of the succeeding ten years. The additional funds provided in the first year are intended for use in providing facilities in Cordova and to cover the start-up costs of the Institute.

The Committee believes that the successful operation of the Institute can be enhanced by effective cooperation with local interests and the use of local expertise. Since the *Exxon Valdez* spill, the newly incorporated Prince William Sound Science and Technology Institute (PWSSTI) has received widespread local support, and the Committee believes that this entity should play a significant role in the work of the Institute. It has come to the Committee's attention that the University of Alaska's Institute for Marine Studies and the PWSSTI have considered arrangements that will allow the PWSSTI to administer the operations of the Institute while the University's Institute of Marine Studies would provide scientific oversight through chairmanship of the Scientific and Technical Committee established in subsection (d) of this section. Such arrangements are consistent with this section.

The Committee also intends that the scope of the Institute's activities not be limited to Prince William Sound, but rather that it extend to all areas of Alaska that were affected by oil or suffered significant socio-economic disruption as a result of the *Exxon Valdez* spill.

In appointing representatives to the Advisory Board, the Committee intends that the Federal and State agencies should select persons who have experience with oil spills and their effects, so that the undertakings of the Institute have practical applications in addition to their academic significance. In particular, it is intended that the representative of the Department of the Navy be a person with recent or continuing experience with the Navy's oil spill response efforts.

SECTION 205—TRANS-ALASKA PIPELINE LIABILITY FUND

A considerable amount of public concern and litigation surrounded the design, construction and proposed operation of the Pipeline in the early 1970's. In order to end the controversy and proceed with the Pipeline as a matter of national policy, the Congress enacted specific legislation that imposed burdens on the industry as part of the congressional authorization which allowed construction and operation of the Pipeline. These obligations were part of the balance that Congress struck at the time between public concern for the environment and the national interest in a secure source of oil. The Fund was one of the burdens that Congress placed on the industry to encourage responsible operation of the tankers transporting North Slope oil, and to ensure that adequate compensation

was available for cleanup costs and payment of damages in the event of a spill. Just as the capacity of, and risks associated with, the tankers employed in the trade have increased, so too have the burdens upon industry necessary to maintain the balance between the public concern for safety in the transport of oil and the national interest in producing and transporting the oil.

Several lessons have been learned from the *Exxon Valdez* spill, and these are reflected in the modifications made to the TAPAA by this section. Congress sought to strike a balance between protection of the environment and the national interest in energy development with the creation of the Fund, and the changes made are consistent with that goal. Subsequent developments have upset that balance; this section restores it.

Subsection (a) raises the strict liability limit of the Fund to $750 million, raises the limit of liability to $70 million for the individual shipowner, provides that $150 million of the $750 million shall be immediately available to Federal, State, and local agencies for cleanup operations in the event of a spill, and directs that claims be proportionately reduced in the event the cost of the spill exceeds $750 million.

At the time the TAPAA was enacted, the $100 million liability level contained in the original Act was thought to be adequate. As the *Exxon Valdez* spill has tragically demonstrated, however, modern tankers have grown far beyond the size of the tankers that were calling at Valdez when the Pipeline was first authorized, and the $100 million liability limit established by Congress is now woefully inadequate. Recognizing that Exxon is expected to spend between $500 million and $1 billion to clean up the spill in Alaska, the Committee believes that raising the strict liability limit to $750 million for the Fund and $70 million for the shipowner is both necessary and appropriate.

One of the primary lessons learned in the aftermath of this tragic spill is the need for quick and decisive action to control and contain a spill. For small spills, this can adequately be done by the tanker operator or contract personnel with government oversight, but in the event of a large spill the Government must and should intervene rapidly to ensure that all possible steps are taken immediately. One of the primary concerns that slowed governmental action in the case of the *Exxon Valdez* spill was the lack of adequate funding with which to respond.

In order to allow government to respond quickly to a spill, subsection (a) also provides that $150 million shall be automatically available to the Federal Government in the event of a spill involving oil transported through the Pipeline, of which up to $50 million can be made available to State and local governments. The $150 million would be made available to cover expenses by government entities as they occur, rather than many months or even years after the fact. The Committee notes that the $150 million would be an advance from the Fund to the Government in recognition of the fact that most cleanup costs would eventually be recovered from the Fund at a later date when proper claims are submitted. This means that proper claims still must be submitted by the governments involved to justify expenses paid by the $150 million advance. To the extent that any of the $150 million is not expended,

or that valid claims are not submitted to cover the expenses incurred, the unexpended or invalid sums must be returned to the Fund.

Subsection (a) further provides that expenditures made by the governments, up to the $150 million immediately available, are not subject to proportionate reduction in the event that the total cost of the cleanup and damages exceeds the $750 million liability limit of the Fund. To the extent that governmental costs exceed $150 million, claims submitted by government to the Fund, above and beyond those claims covered by the $150 million advance, are subject to the same proportional reduction that all other claims are subject to in the event that the total claims from all parties exceed the $600 million that remains per incident after the $150 million advance is subtracted.

Subsection (b) provides that claims presented to the shipowner which are not paid within one year may be presented to the Fund for payment. In the event the Fund pays the claim originally filed against the shipowner, the Fund is subrogated to all rights of the claimant, and may seek recovery from the shipowner up to the $70 million limit of liability for the shipowner.

This subsection is intended to assure citizens that legitimate claims will be expeditiously paid in the event that the cost of a spill does not exceed the $70 million limit of liability for the shipowner. Under current law, the Fund is not liable for the payment of any claims until the level of claims exceeds the liability of the shipowner. In the event of a small spill, it is quite possible, and has in fact happened in the case of the 1987 *Glacier Bay* spill in Cook Inlet, Alaska, that claims filed with the shipowners and their insurers will not be paid for years after the event. It is the intent of the Committee that claims should be expeditiously paid whenever possible, and that claimants should not be left with the courts as their only recourse in the event that a shipowner proves unable or unwilling to settle claims in an efficient and timely manner. To this end, the Committee included language in subsection (b) to amend the TAPAA so as to enable the claimant to recover from the Fund in the event that legitimate claims are not settled by the shipowner within one year after the claim is filed. The Fund is subrogated to all rights of the claimant for any claims paid, and it is the Committee's intent that the fund then shall seek recovery from the shipowner, up to the shipowner's limit of liability under this Act. In addition to providing an expeditious remedy outside of the court system, the Committee believes that this provision will also standardize the compensation made available for cleanup costs and damages, which are currently defined for the Fund by regulation, but are less clear in the case of claims filed with the shipowner.

Subsection (d) amends the TAPAA to direct the Fund to provide funds for the Institute established in section 204 of this Act, and to provide funds for the installation of the Bligh Reef Light and the improvements to the Prince William Sound VTS system required by sections 202 and 203, respectively.

When Congress passed the TAPAA, it created the Fund to pay for cleanup costs and damages as a means to reduce the risk to the public of damage from a spill. By creating the Fund, Congress spread the burden of liability for spills among all the operators

who transport oil from the Pipeline. The provisions of subsection (d) are consistent with Congress' intent in creating the Fund. The Bligh Reef Light, the upgrade of the VTS system, and the Institute are all measures designed to reduce the risk to the public, either by helping to prevent spills, in the case of the light and the upgrade, or by reducing the damage that a spill might cause, through research by the Institute.

Congress has often taken steps in the past to regulate all aspects of the oil and shipping industries, and there is no doubt that the modification of the rights and burdens of the parties granted the right-of-way for the Pipeline is well within the legislative authority of Congress. The Committee believes that the public interest in the safe transport of oil from the Pipeline to other parts of the United States outweighs the burden imposed by the expenditures from the Fund that are required by this subsection. The outlay from the Fund required in the amendment made by subsection (d) will not cause a substantive economic impact on the operation of the Fund, nor will it interfere with the reasonable investment expectations of the Fund.

Subsection (e) adds a provisioin to the TAPAA that states that the term "damages" includes the loss of taxes, fees, royalties, rents, and other revenues sustained by local government entities as a result of a spill covered by the Fund. This particular section is made retroactive to January 1, 1989.

This subsection is intended by the Committee to clarify that the damages payable by the Fund include lost taxes and other revenues relied upon by local governments in the event that a spill causes the loss of these revenues. Damages are not specifically defined in the TAPAA; thus the exact definition has been left to regulation. In the initial regulations (42 Federal Register 31789 et seq.) that were published to govern operation of the Fund, the term "damages" included "[l]oss of tax revenue for a period of one year due to injury to real or personal property" (42 Federal Register 3395 et seq.), the definition of "damages" no longer includes specific mention of the loss of tax revenues as an element of damages, though the Committee notes that there is some discussion of this omission in the "Supplementary Information" that is provided as a preamble to the regulations. To avoid any confusion, and to ensure that the interpretation of "damages" includes all of the elements listed in both the initial regulations (42 Federal Register 31790) and the revised regulations (53 Federal Register 3396), the Committee has included a provision that includes loss of tax and related revenues as one of the elements of "damages."

TITLE III—PROVISIONS APPLICABLE TO MISSISSIPPI RIVER

SECTION 301—RADIO COMMUNICATIONS ON MISSISSIPPI RIVER

This section requires that the Secretary issue regulations within one year after the date of enactment of this legislation to ensure that vessels transiting the Mississippi River have the capability to receive navigation safety warnings and to engage in radio communications on designated frequencies with the Coast Guard, other vessels transiting the Mississippi River, and such stations as may be specified by the Secretary.

During Committee hearings, information was provided which indicated that many vessels operating on the Mississippi River do not have the capability to receive Coast Guard marine warnings. This is apparently due to the fact that the frequency that the Coast Guard uses for its broadcasts is not always available on the equipment carried by vessels operating in that area.

The committee believes that it is essential that all vessels in this area, due to its heavy congestion, must be capable of communicating with the Coast Guard and with other vessels at all times. The Committee does not intend that the entire Mississippi River be subject to these requirements, but only those areas most in need of a constant ability to receive Coast Guard broadcasts. Nor does the Committee expect that all vessels in the critical areas will be subjected to this requirement. Clearly, however, oil tankers and other vessesl posing major risks should be in contact with the Coast Guard. The Secretary is given the discretion to determine the type of equipment and geographic area necessary to achieve the purposes of this section.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 46 OF UNITED STATES CODE

Chapter 77 of that Title

Sec.
7701. General.

* * * * * * *

[7704. Dangerous drugs as grounds for revocation.]
7704. Dangerous drugs and other grounds for suspension or revocation.

* * * * * * *

Section 7704 of that Title

[§ 7704. Dangerous drugs as grounds for revocation]

§ 7704. Dangerous drugs and other grounds for suspension or revocation.

(a) In this section, "dangerous drug" means a narcotic drug, controlled substance, and marihuana (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) *and "serious criminal offense" means a crime so heinous in nature that the commission of such offense would reflect adversely on the offender's character and on the offender's fitness to serve consistent with the interest of safety at sea.*

(b) through (c) * * *

(d) If it is shown at a hearing under this chapter that a holder has been convicted of a serious criminal offense, has been convicted

within the previous 5 years of an offense described in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 (23 U.S.C. 401 note), has had a license to operate a motor vehicle denied, cancelled, revoked, or suspended in any jurisdiction of the United States for cause, where that cause would reflect adversely on the holder's fitness to serve, or fails in any way to meet the standards for issuance prescribed in sections 7101 and 7302 of this title, the license, certificate of registry, or merchant mariner's document may be revoked or suspended.

NATIONAL DRIVER REGISTER ACT OF 1982

SECTION 206 OF THAT ACT

ACCESSIBILITY OF REGISTER INFORMATION

SEC. 206. (a) * * *
(b)(1) * * *
(2) through (4) * * *
(5) Any request made under this subsection shall be made in such form, and according to such procedures, as the Secretary shall establish by regulation.

[(5)**]** *(6)* Any individual who is employed by a railroad as an operator of a locomotive, or who seeks employment with a railroad as an operator of a locomotive, may request the chief driver licensing official of a State to transmit information regarding the individual under subsection (a) of this section to his or her employer or prospective employer, or to the Secretary. There shall be no access to information in the Register under this paragraph which was entered in the Register more than three years before the date of such request, unless such information relates to revocations or suspensions that are still in effect on the date of the request. Information submitted to the Register by the States under Public Law 86-660 (74 Stat. 526) or under this title shall be subject to access for the purpose of this paragraph during the transition described under section 203(c) of this title.

(7) Any individual who has applied for or received a merchant mariner's document under section 7302 of title 46, United States Code, a license or certificate of registry under section 7101 of title 46, United States Code, or a renewal of such merchant mariner's document, license, or certificate of registry to serve on or operate a commercial vessel may request the chief driver licensing official of a State to transmit information regarding the individual under subsection (a) of this section to the Commandant of the Coast Guard. The Commandant may receive such information and shall, prior to using such information in any adverse action regarding the merchant mariner's document, license, or certificate of registry of the individual, make such information available to the individual for review and written comment. The Commandant shall not otherwise divulge or use such information, except to verify information required to be reported to the Commandant by an individual applying for such a merchant mariner's document, license, certificate of registry, or renewal and to evaluate whether the individual meets the minimum standards required in order to receive such a merchant

mariner's document, license, certificate, or renewal. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than 5 years before the date of such request, unless such information relates to revocations or suspensions which are still in effect on the date of the request. Information submitted to the Register by States under the Act of July 14, 1960 (74 Stat. 526), or under this title shall be subject to access for the purpose of this paragraph during the transition to the Register described under section 203(c) of this title.

TRANS-ALASKA PIPELINE AUTHORIZATION ACT

SECTION 204 OF THAT ACT

LIABILITY

SEC. 204. (a) * * *
(b) * * *
(c)(1) * * *
(2) * * *

[(3) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first $14,000,000 of such claims that are allowed. Financial responsibility for $14,000,000 shall be demonstrated in accordance with the provisions of section 311(p) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(p)) before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to $100,000,000. If the total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or state law.]

(3)(A) Strict liability for all claims arising out of any one incident shall be limited to $750,000,000. Subject to paragraph (4), the owner and operator of the vessel shall be jointly and severally liable for the first $70,000,000 of such claims that are allowed. Financial responsibility for $70,000,000 shall be demonstrated in accordance with the provisions of section 311(p) of the Act of June 30, 1948 (33 U.S.C. 1321(p)), before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to $750,000,000.

(B) Notwithstanding any other provision of law, after receiving notice that an incident has occurred, upon the request of the Secretary of the department in which the Coast Guard is operating, the Fund shall immediately deposit $150,000,000 in the account established under section 311(k) of the Act of June 30, 1948 (33 U.S.C. 1321(k)), for use by the Coast Guard to reimburse Federal and State agencies, including political subdivisions of a State, for expenses incurred in connection with the containment and clean-up efforts undertaken in response to the incident. The $150,000,000 so deposited shall be counted against the $750,000,000 available for any single incident. When a State or political subdivision thereof has commenced containment or clean-up efforts, it may submit a request to the Secretary of the department in which the Coast Guard is operating for an advance payment from such account to facilitate such efforts. Such advances in the aggregate shall not exceed $50,000,000.

Any advance from the account shall be repaid immediately upon receipt by the State or political subdivision of a reimbursement from the owner or operator of the vessel, any other party held liable, or the Trans-Alaska Pipeline Liability Fund for expenses incurred. Any portion of the $150,000,000 deposited that is not expended shall be returned to the Fund.

(C) Any government expenditures beyond the $150,000,000 made available in subparagraph (B) of this paragraph shall be submitted with all other claims for reimbursement from the $600,000,000 remaining. If the total claims allowed under this subparagraph exceed $600,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or State law.

(4) Notwithstanding the provisions of paragraph (3), any claim not paid by the owner or operator of the vessel within one year after its submision to the owner or operator may be submitted to and paid by the Fund. Upon payment, the Fund shall be subrogated to all rights of the claimant against the owner or operator for the amount of such payment, up to the limit of liability for the owner and operator set forth in paragraph (3).

[(4)**]** *(5)* The Trans-Alaska Pipeline Liability Fund is hereby established as a non-profit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the holders of the trans-Alaska pipeline right-of-way under regulations prescribed by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress.

[(5)**]** *(6)* The operator of the pipeline shall collect from the owner of the oil at the time it is loaded on the vessel a fee of five cents per barrel. The collection shall cease when **[**$100,000,000**]** *$750,000* has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below **[**$100,000,000**]** *$750,000.*

[(6) The collections under paragraph (5) shall be delivered to the Fund. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by the Secretary. Income from such securities shall be added to the principal of the Fund.**]**

(7)(A) The collections under paragraph (6) shall be delivered to the Fund.

(B) The Fund shall make available to the Department of Commerce $5,000,000 for fiscal year 1989, and $2,000,000 for each of the following fiscal years through 1999, for the purpose of funding the Prince William Sound Oil Spill Recovery Institute established under section 204 of the Oil Tanker Navigation Safety Act of 1989.

(C) The Fund shall make available to the Secretary of the department in which the Coast Guard is operating such funds for fiscal years 1989 and 1990 as are considered necessary by the Secretary to carry out the provisions of sections 202 and 203 of the Oil Tanker Navigation Safety Act of 1989.

(D) Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration, satisfaction of claims, and subparagraphs (B) and (C) of this paragraph shall be

prudently invested in income-producing securities approved by the Secretary. Income from such securities shall be added to the principal of the fund.

[(7)] *(8)* The provisions of this subsection shall apply only to vessels engaged in transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States. Strict liability under this subsection shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

[(8)] *(9)* In any case where liability without regard to fault is imposed pursuant to this subsection and the damages involved were caused by the unseaworthiness of the vessel or by negligence, the owner and operator of the vessel, and the Fund, as the case may be, shall be subrogated under applicable State and Federal laws to the rights under said laws of any person entitled to recovery hereunder. If any subrogee brings an action based on unseaworthiness of the vessel or negligence of its owner or operator, it may recover from any affiliate of the owner or operator, if the respectrive owner or operator fails to satisfy any claim by the subrogee allowed under this paragraph.

[(9)] *(10)* This subsection shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements.

[(10)] *(11)* If the Fund is unable to satisfy a claim asserted and finally determined under this subsection, the Fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest, subject to approval of the Secretary.

[(11)] *(12)* For purposes of this subsection only, the term "affiliate" includes—

(A) Any person owned or effectively controlled by the vessel owner or operator; or

(B) Any person that effectively controls or has the power effectively to control the vessel owner or operator by—

(i) stock interest, or

(ii) representation on a board of directors or similar body, or

(iii) contract or other agreement with other stockholders, or

(iv) otherwise; or

(C) Any person which is under common ownership or control with the vessel owner or operator.

[(12)] *(13)* The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.

(14) The term "damages" in paragraph (1) includes the loss of taxes, fees, royalties, rents, and other revenues incurred by a political subdivision of a State due to the injury, destruction, or loss of real property, personal property, or natural resources, or diminished economic activity resulting from a vessel discharge of oil. This paragraph applies to any such discharge occurring on and after January 1, 1989.

ROBERT T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT

SECTION 102 OF THAT ACT

DEFINITIONS

SEC. 102. As used in this Act—

(1) * * *

(2) MAJOR DISASTER.—"Major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, *oil spill*, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(3) through (9) * * *

SECTION 317 OF THAT ACT

SEC. 317. RECOVERY OF ASSISTANCE.

(a) PARTY LIABLE.—Any person who intentionally, *or through willful misconduct or negligence,* causes a condition for which Federal assistance is provided under this Act or under any other Federal law as a result of a declaration of a major disaster or emergency under this Act shall be liable to the United States for the reasonable costs incurred by the United States in responding to such disaster or emergency to the extent that such costs are attributable to the intentional act or omission, *or the willful misconduct or negligence,* of such person which caused such condition. Such action for reasonable costs shall be brought in an appropriate United States district court.

(b) * * *

ADDITIONAL VIEWS OF SENATOR GORTON REGARDING OIL TANKER NAVIGATION SAFETY ACT

The direction of the Committee bill is sound. It focuses on certain national and local concerns arising out of the *Exxon Valdez* tragedy which are necessary and appropriate. Largely, these deal with improvements in the Nation's future ability to respond to another major accident.

It is clear to me that we must do more than prepare to respond to another disaster: we must prevent it.

During our hearings, the Exxon Corporation exhibited, in my view, an arrogant and calloused attitude toward what I believe to be the paramount duty of any corporation given license to develop public resources, that is, to protect the surrounding environment. As I said on the floor of the Senate on May 3, "with the privilege to profit comes the responsibility to protect." And if oil companies do not wish to accept this responsibility voluntarily, out of a sense of obligation and honor, than we shall have to create a reason they do understand: risk.

It is simply unacceptable public policy to grant private enterprise the right to make profits that are limited only by their skill and the marketplace, but to ask taxpaying consumers to bear the fullest measure of the potential harm to the environment from these activities. In Alaska today, we are reaping the effects of that policy, which privatizes profit and socializes risk.

The Committee bill only partially addresses this problem. The bill amends the Trans-Alaska Pipeline Authorization Act to raise the individual strict liability limits from $14 million to $70 million per incident, and to raise the size of the TAPS Fund, which covers costs above the limits of individual liability, from $100 million to $750 million. The bill also amends the Stafford Act to include willful misconduct and negligence in the definition of liability.

But oil traverses U.S. waters from sources other than Prudhoe Bay. And while the bill's combination of increased liability limits and fund size may reasonably cover the potential damage of another spill of that Alaskan oil, it does nothing for oil damage from any other source. In my judgment, we need a much stricter regime of oil spill liability law, which causes the oil companies to *choose* to behave in a vastly more responsible manner. As a fundamental premise, I do not believe that we are well served by limits on oil spill liability.

At the markup, I brought to the Committee's attention an amendment to this bill. I did not ask for a vote on this amendment, but raised it then to solicit the comments and support of Members, and to notify the committee that I intend to introduce the amendment as a bill and bring it up for consideration as an amendment to the Committee bill when it reaches the floor.

In the interim, I look forward to working further with the Committee to reconcile the more limited approaches to liability amendments presently contained in the bill, and the more comprehensive approach embodied in my amendment.

My amendment would revise the "rules" of oil spill liability, so as to make corporations pay the full costs of spill damage and cleanup, and to penalize corporations when they are negligent. These principles are fundamentally fair, and make common sense. We apply the same principles in many other aspects of laws: you make a mess, you clean it up. You injure someone, you pay the damages. You behave in a grossly irresponsible way, you risk a loss of privilege. Irresponsible drivers can lose their license; irresponsible companies should also be penalized.

But I do not advocate retribution; I advocate prevention. I believe that private enterprise can behave responsibly. And I believe that if we enact this legislative, it will. Private enterprise understands risk, and through this understanding, will behave in an environmentally responsible manner. It is past time that corporations shoulder their full responsibilities to the environment, and take them off the back of the taxpayer.

I thank the Chairman and the committee for agreeing to print my proposed amendment in the committee report. What follows is an analysis of the key provisions of the amendment, and its text.

Section-by-Section Analysis of Gorton Amendment to Oil Tanker Navigation Safety Act

OVERALL PURPOSE

To cause corporations to act to prevent future catastrophic oil spills as a result of new standards of liability.

The amendment has four basic policy provisions:

1. Owners or operators of oil tankers or facilities shall be strictly liable for the entire monetary amount of oil spill damages, regardless of how much oil is spilled, or whether any Federal agency later takes control of or participates in the cleanup.
2. In the event that the spill is caused by negligence, the corporation(s) shall pay a fine in an amount equal to the cost of the damages.
3. In the event of a spill caused by willful negligence or willful misconduct, the owners or operators shall be prohibited from profiting from the extraction, transport, purchase or sale of crude oil or its derivatives from the crude oil source(s) involved in the disaster for one year.
4. The fines imposed over and above the cost of cleanup shall be used by the Secretaries of Commerce, Transportation, Interior, and the Administrator of EPA for environmental restoration and related purposes.

SECTION-BY-SECTION ANALYSIS

Section 1. Removes existing dollar limits on liability so that an owner or operator which spills oil, (or hazardous substances, which are treated equally under present law) without negligence, must

pay the full costs of cleanup and restoration. The costs are collected in the form of a civil penalty, and placed in the existing revolving fund set up for spill cleanup. The Secretary (of the department in which the Coast Guard is operating) administers these provisions. In accordance with existing law, the Secretary may exercise discretion in determining the amount of the "penalty."

If the Secretary determines that negligence was involved, the civil penalty is doubled. Half the penalty goes to the existing spill cleanup revolving fund, and half to a new fund. (The new fund, to be administered jointly by the Secretary, and the Secretaries of Commerce and Interior, and the Administrator of EPA, will be used for additional environmental restoration and related purposes.)

Establishes that, irrespective of negligence, the owner or operator causing a spill is liable for damages to other persons.

Establishes that, in the case of willful negligence or willful misconduct, the Secretary shall assure that the owner or operator shall not profit from the extraction, transportation, purchase or sale of oil from the source involved in the spill for one year following the spill. This penalty will also go into the new fund.

Section 2. Modifies existing liability provisions to conform with the above, and establishes that any owner or operator causing such spills shall be jointly and severally and strictly liable to the United States Government for the actual cost of removal by the U.S. Government.

Repeals previous section of law now modified as above.

APPENDIX

S. 1461

At the end of the Committee substitute, add the following:

SECTION 22. (a) Paragraph (6) of subsection (b) of section 311 of the Clean Water Act (33 U.S.C. 1321(b)(6)) is amended to read as follows:

"(6)(A)(i) Any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall, if such discharge did not result from the negligence of such owner, operator, or person, be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating in an amount determined by the Secretary to be equal to, in the aggregate, the costs, as determined by the Secretary, of the removal of oil or a hazardous substance for which such owner, operator, or person is liable under subsection (f) of this section, and the costs and expenses which would be required in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section. Any amount assessed as a civil penalty under this subparagraph (i) shall be deposited in the fund established pursuant to subsection (k). No penalty shall be assessed unless the owner, operator, or person charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by the Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by the Secretary. In addition, the Secretary shall consider any and all amounts expended by such owner or operator in the removal and cleanup of such discharge. The Secretary of the Treasury shall withhold at the request of the Secretary of the department in which the Coast Guard is operating the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satsifactory to such Secretary.

"(ii) In the administration of subparagraph (i) of this paragraph, the Secretary of the department in which the Coast Guard is operating, shall, in the case of any such discharge referred to in such subparagraph caused by the negligence of such owner, operator, or person, as determined by the Secretary, assess a civil penalty against such owner or operator in an amount equal to, in the ag-

gregate, twice the amount that would have been assessed under subparagraph (i), if there had been no negligence. Notwithstanding the provisions of subsection (k), one-half of all amounts assessed as civil penalties under this subparagraph (ii) shall be deposited in the fund established pursuant to subparagraph (D) of this paragraph.

"(B) In addition to the civil penalty authorized by this paragraph, the Administrator may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost under subsection (c) of this section for the removal of such substance by the United States Government.

"(C) Any costs of removal incurred in connection with a discharge excluded by subsection (a)(2)(C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 1319(b) of this Act.

"(D) There is established in the Treasury a Resources Restoration and Environmental Fund. Moneys in the fund shall be available in such amounts as are hereafter provided for in appropriation Acts for the restoration and replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section, and for such other environmental purposes as the Secretary of Commerce, Secretary of Interior, Secretary of the department in which the Coast Guard is operating, and the Administrator of the Environmental Protection Agency shall determine.

"(7) Any person who is damaged as a result of the discharge of oil or a hazardous substance by an owner or operator as referred to in paragraph (6) may, in a civil action in any appropriate United States district court, recover from the owner or operator an amount equal to the actual damages sustained by that person. Such suit must be commenced not later than 2 years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

"(8) In addition to other penalties imposed by this Act, the Secretary of the department in which the Coast Guard is operating shall, by regulation, take such action as may be necessary to assure that any owner, operator, or person referred to in subparagraph (A) of paragraph (6) of this subsection who discharges oil or a hazardous substance in violation of paragraph (3) of this subsection shall, if the Secretary determines that the discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge, not be entitled to retain any profit for any activities carried out by such operator, owner, or person, during the 12-month period following such discharge, involving the extraction, purchasing, selling, shipping, or transporting of oil or hazardous substance from the region of origin, as determined by the Secretary, where such discharge occurred. Notwithstanding the provisions of subsection (k), any moneys representing profits acquired by the Secretary shall be deposited in the fund established by subparagraph (D) of paragraph (6) of this subsection.".

(b)(1)(a) Paragraphs (1), (2), and (3) of subsection (f) of section 311 of the Clean Water Act (33 U.S.C. 1321(f)) are amended to read as follows:

"(1) Any owner or operator of a vessel or an onshore or offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be jointly and severally and strictly liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.".

(b) Subsections (g) and (i) of section 311 of the Clean Water Act (33 U.S.C. 1321 (g) and (i)) are repealed.

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